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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 403

LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A.F.L.), AN UNINCORPORATED ASSOCIATION, THROUGH H. L. EVERTON, ITS PRESIDENT, THE OTHER OFFICERS AND MEMBERS OF SAID ASSOCIATION, INDIVIDUALLY AND AS REPRESENTATIVES OF THE LICENSED AND UNLICENSED PERSONNEL OF VIRGINIA FERRY CORPORATION,

Appellant,

vs.

HON. JOHN S. BATTLE, AS GOVERNOR OF THE COMMONWEALTH OF VIRGINIA,

Appellee

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the appellants submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the United States to review on appeal the final decree and judgment of the district court entered in this cause.

Opinion Below

The opinion of the three-judge United States District Court for the Eastern District of Virginia was filed August 3, 1951 and is unreported. A copy of the opinion and final decree and judgment, also entered August 3, 1951, are attached hereto as Appendix A.

Jurisdiction

The final decree and judgment of the district court was entered August 3, 1951. A petition for appeal was presented to the district court herewith, to-wit, on September 24th, 1951. The statutory jurisdiction of the Supreme Court of the United States to review the final decree and judgment in this case by direct appeal is conferred by Section 1253 of Title 28, U.S.C. The following cases are believed to sustain the jurisdiction of the Supreme Court:

Automobile Workers v. *O'Brien*, 339 U. S. 454;

Bus Employees v. *Wisconsin Board*, 340 U. S. 383 and related cases;

American Federation of Labor v. *Watson*, 327 U. S. 582;

Utah Fuel Co. v. *National Bituminous Coal Commission*, 306 U. S. 56;

Shields v. *Utah Idaho Cent. R. Co.*, 305 U. S. 177.

State Statute Involved

The statute of the State of Virginia which appellants contend is unconstitutional and invalid, but which the district court refused to hold unconstitutional and invalid, is the Virginia Public Utilities Labor Act, Va. Code Ann. (1950), Title 40, §§ 75 *et seq.*, enacted in 1947. A summary of the pertinent provisions of the statute is set forth below.

Questions Presented

(1) Whether the provisions of the Virginia statute prohibiting peaceful strikes by the employees of so-called public utilities in industries affecting interstate commerce except upon prescribed conditions, and further in effect authorizing the Governor to prohibit such peaceful strikes, are in conflict with the provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136; 29 U.S.C., §§ 141-197) and with the commerce power of the Congress.

(2) Whether, where a labor organization and its members are, under the terms of a plainly invalid state statute, forbidden to exercise rights guaranteed by federal law and are threatened with and actually subjected to criminal prosecution and civil litigation for exercising such federal rights, the aid of a federal court of equity was properly invoked to protect such rights against immediate and irreparable injury.

(3) Whether, where there is no genuine question as to the interpretation of a plainly invalid state statute, and where the equitable jurisdiction of a federal district court is properly invoked, respect for state policy requires the federal court to stay its hand even though the labor organization and its members are meanwhile immediately and effectively deprived of rights guaranteed by federal law.

(4) Whether, even though respect for state policy and the interpretative powers of the state courts might require a federal court to stay its hand under such circumstances, the federal district court is not required to retain the case on its docket and await the interpretation of the state courts rather than to dismiss the complaint.

Statement

This is an appeal from a final decree of a three-judge United States District Court for the Eastern District of Virginia dismissing a complaint filed by appellants and seeking to enjoin appellee from enforcing the Virginia Public Utilities Labor Act, Va. Code Ann. (1950), Title 40, §§ 75 *et seq.*

1. *The Statute:* The Virginia statute applies to "utilities" or "public utilities" (§ 93). These terms (referred to hereafter as "public utilities") are defined "to mean *any* person, partnership, association, or *corporation, engaged in the business of furnishing* electric power, water, light, heat, gas, *transportation* or communication, or any one or more of them, to the people of Virginia" (§ 93) (emphasis supplied). Strikes, lock-outs and work stoppages on public utilities are made unlawful unless the restrictions and requirements of the statute are fulfilled (§ 78); and it is made the specific duty of the Governor to prevent interruptions of service which are unlawful under the statute (§ 75). Whenever changes in wages or terms of employment are desired, the party requesting any such change must give notice to the opposing party and to the Governor and designate a time, not less than two nor more than sixty days thereafter, and a place for a conference with the opposing party (§ 78). In the event, after entering into negotiations in good faith, the parties are unable to agree, the Governor must be notified and another meeting must be held ten days from the time of adjournment of the first meeting (§ 78). The Governor may attend the second conference or send a representative or representatives to mediate the differences (§ 78). If at any time after the second meeting, one of the parties feels that further negotiation will be fruitless and

is unwilling to continue the same, such party must notify the other party and the Governor to that effect (§ 78). Upon receipt of such a notice, the Governor shall request both parties to submit to arbitration (§ 78). If the parties are unwilling to arbitrate and one of them decides upon a work stoppage, he must fix the time for the beginning of the work stoppage, which must be not less than five weeks after the time of giving notice thereof, and he must also immediately notify the Governor and the other party of such fact and of the time so fixed (§ 78).

The Governor may, after receipt of such a notice, declare that the threatened interruption of service would menace the public health, safety or welfare (§ 79); and if he so determines, the Governor may, through his representatives, make preparation for state operation of the facility (§ 83). If an interruption of service actually occurs, the Governor may take possession of the facility and cause it to be operated by the state (§ 80). When the dispute has been settled, the Governor is required to return the plant or facility to its owners (§ 90). Although the status of an employee is not to be affected by his refusal to work during the period of state operation (§ 87), and though the right of collective bargaining is reaffirmed (§ 76), the statute prescribes criminal penalties for any interference with the management of the facility after seizure by the Governor, and it is not questioned that a strike comes within the statutory prohibition (§ 84). Violations of the statute are punishable by fine and by imprisonment up to twelve months (§ 91). In addition, civil penalties up to $10,000 per day may be assessed against labor organizations engaging in prohibited strikes (§ 92).

2. *The Facts:* Appellants are Local 333B, United Marine Division of the International Longshoremen's Association, an unincorporated Association, and its officers and members.

Local 333B is the duly certified collective bargaining agent of the employees of the Virginia Ferry Corporation, a Virginia company which operates a ferry on U. S. Highway 13 across the Chesapeake Bay between Kiptopeke Beach and Little Creek, Virginia.

For some time prior to May 17, 1951, appellants had attempted to engage in collective bargaining with the corporation, desiring certain changes in wages and working conditions. On May 17, 1951, the corporation obtained from the Court of Law and Chancery of the City of Norfolk, Virginia an injunction restraining appellants from engaging in any strikes or work stoppage until they had complied with the provisions of the statute challenged in the instant case, the Virginia Public Utilities Labor Act, Va. Code Ann. (1950), Title 40, §§ 75 *et seq.* By its express terms, the state court injunction was to continue until appellants complied with the requirements of the Virginia statute.

In compliance with the requirements of the injunction, appellants on May 22, 1941, notified the appellee, Governor Battle, requesting certain changes in wages and working conditions. This notice was sent under protest and stated that it was sent only in compliance with the decree of the state court. On May 24, 1951, the appellee acknowledged a copy of the notice. On May 25, 1951, and pursuant to the challenged statute, the Commissioner of Labor and Industry, upon the Governor's direction, met with the representatives of appellants and the company. Again, on June 4, 1951, a similar meeting was held.

These meetings did not result in a settlement of the differences between the parties. On June 15, 1951, appellants informed the Governor in writing that negotiations between the parties had been discontinued and that a work stoppage had been set for July 27, 1951. Therefore, on June 19, 1951, the appellee, again pursuant to the terms of

the challenged statute, requested in writing that the parties submit their differences to arbitration. Both parties refused his request.

On the same day, June 19, 1951, appellants filed in the United States District Court for the Eastern District of Virginia a petition seeking an injunction to restrain appellee from enforcing the Public Utilities Labor Act. The petition complained that the statute contravened the Commerce and Due Process clauses of the Federal Constitution and that in particular it was in conflict with the Labor-Management Relations Act, 1947, precisely as the Wisconsin public utility anti-strike law had been held in conflict with the federal law in *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, decided only a few months earlier. Appellants contended in their petition that an appeal from the injunctive order of the state court would involve long and time-consuming procedure; that, under the Virginia Public Utilities Labor Act, the appellee was authorized to seize and operate the ferries owned by the company; that, under the challenged statute, any strike or work stoppage by appellant during such a seizure would subject it and its members to liability for criminal prosecution, including fine and imprisonment; and that, during the delay incident to an appeal from the injunction issued by the state court, the federally guaranteed rights of appellant local union and its members would be successfully invaded and denied, all to appellants' irreparable injury.

On July 5, 1951, prior to the filing of any responsive pleading by appellee, appellants filed an amendment to their petition for injunction stating that on June 25, 1951, the company had requested the state court to issue to appellants and certain of its officers and members an order requiring them to show cause why they should not be punished for contempt, the alleged contempt having consisted in the calling of a work stoppage on June 22, 1951, which was

asserted to be a violation of the state statute. On June 27, 1951, according to the amended petition, the show cause order had been issued; the Attorney General of Virginia, the appellee's chief law officer, personally appeared and prosecuted the contempt proceedings in the name of the Commonwealth; and the state court fined Local 333B the sum of $7,500, as well as imposing fines and jail sentences upon Local 333B's president and secretary.

On July 9, 1951, the Attorney General, on behalf of the appellee, filed a motion to dismiss accompanied by affidavits from the Governor and the State Highway Commissioner. The motion to dismiss stated, in accordance with the accompanying affidavits, that the appellee was not administering, carrying out or enforcing the challenged statute and did not intend to do so in such a manner as would affect the rights of appellants and that the State Highway Commissioner had, on June 26, 1951, pursuant to a separate statute (Va. Code Ann. (1950), Title 33, Article 5, Chapter 3) taken possession of and temporarily engaged in the operation of the properties of the company.

On July 13, 1951, appellants filed a reply to the appellee's motion to dismiss and on July 20, 1951, the cause was heard by the three-judge district court. On August 3, 1951, the court handed down its opinion and entered a final decree dismissing the action. It is from this final decree and judgment that appellants prosecute their appeal.

The Questions Are Substantial

I

The Virginia Public Utilities Labor Act Clearly Invades the Field of Labor Relations in Industries Affecting Commerce Which Congress Has Occupied and Its Provisions Conflict With the Labor-Management Relations Act, 1947.

In two recent decisions, this Court has held that state statutes which impair or limit the right of workers and labor organizations to engage in peaceful strikes are in conflict with the Labor-Management Relations Act, 1947. *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383; *Automobile Workers* v. *O'Brien*, 339 U. S. 454. See also *Bethlehem Steel Co* v. *New York State Labor Relations Board*, 330 U. S. 767.

In effect, these cases hold that in the Labor-Management Relations Act, 1947, the Congress has occupied and preempted the field of regulation of peaceful strikes in industries affecting interstate commerce. Congress having occupied and preempted the field, it is not open for state action unless the Congress has specifically authorized such state action. As the Court pointed out in the *Bus Employees* case, the Congress has, in the Labor-Management Relations Act, 1947, clearly indicated those instances in which it desires to leave the way open for state regulation in this field: for example, Section 14(b), dealing with agreements which require union membership as a condition of employment; Section 8(d)(3), dealing with notices to state mediation agencies; and Section 203(b), dealing with the mediation of disputes having only a minor effect upon interstate commerce.

In at least two glaring respects the Virginia statute is flagrantly inconsistent with the Labor-Management Relations Act, 1947. As previously pointed out in the descrip-

tion of the Virginia Act, Section 78, by requiring two mediation conferences and an additional five weeks' delay before a work stoppage, imposes notices and waiting periods entirely different and palpably inconsistent with the requirements of the Federal statute. *Automobile Workers* v. *O'Brien*, 339 U. S. 454. Furthermore, the seizure provisions of the Virginia statute are equally in conflict with the right to strike guaranteed by the Federal act. By authorizing the Governor to seize a struck utility and by penalizing interference with the operation of the facility during the period of seizure, the Virginia Act effectively authorizes the Governor to prohibit peaceful strikes during the time of seizure. Since, in the statutory scheme, seizure is purely a device for suspending the right to strike and forcing the employees to reach an agreement with the private employer, the Virginia statute is in this respect entirely analogous to the compulsory arbitration imposed on the Wisconsin act and held invalid in this Court in the *Wisconsin* case. See note 37 Virginia Law Review, 769, 777 (1951).

The conflict between the Virginia statute and the Labor-Management Relations Act, 1947, seems so patent as to obviate the necessity of extended discussion. Certainly there can be no doubt that the validity of the Virginia statute presents a substantial Federal question.

II

The District Court Erred in Dismissing Appellants' Bill for Want of Equity

In any case where equitable relief is sought to restrain the enforcement of a state statute, a balance must be struck between the conflicting canons of respect for state policy on the one hand and the protection of federally guaranteed individual rights on the other.

The present case seems, with respect to the existence of a cause of action in equity, to fall squarely under *American Federation of Labor* v. *Watson*, 327 U. S. 582. The *Watson* case dealt with an amendment to the Florida constitution which, in very general terms, forbade abridgement of the individual's right to work on account of membership or nonmembership in a labor organization. The prohibition thus imposed in Florida's constitution was challenged by certain labor organizations upon the ground, among others, that it was in conflict with the National Labor Relations Act, 49 Stat. 449, 29 U.S.C. § 151 *et seq.* In that case the appellants' bill alleged that the defendant, the Attorney General of Florida, had threatened to institute civil and criminal proceedings for the enforcement of the challenged constitutional amendment, including *quo warranto* proceedings against employers. It was alleged that the threatened enforcement of the amendment there under attack would cause irreparable injury to the attacking labor organizations. Despite the contention of the defendants that plaintiffs possessed an adequate remedy by defending themselves by appeals from various actions, civil and criminal, pending or about to be brought in the state courts, this Court held that the labor organizations had set forth in their bill a good cause of action in equity.

It is submitted that the *Watson* case far more nearly covers the case at bar than the two cases cited by the district court, *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U. S. 293, and *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U. S. 341. This is not a case, as were those, in which the persons seeking equitable relief rely merely upon the expense of defending litigation in the state courts as irreparable injury affording a ground for action. Here, to an even great degree than in the *Watson* case, appellants are, by harassment and the overhanging threat of

civil and criminal penalties, actually subject to the loss of federally protected rights during the period of litigation in the state courts. In the *Watson* case, the civil and criminal proceedings were only threatened. Here they have already begun. Already a summary injunction has been issued and appellant Local 333B and two of its officers have been punished for criminal contempt. The injunction remains in effect: any further exercise of the right to strike by appellants would subject them to the risk of further prosecution;[1] compliance with the terms of the state injunction precludes the exercise of the federally protected right to strike. In addition, it is always within the power of the appellee, Governor Battle, by seizing the Company's property pursuant to the statute in question to subject appellants to the risk of even additional penalties. The case for intervention by a court of equity thus seems ever stronger here than in the *Watson* case and in *Shields* v. *Utah Idaho Cent. R. Co.*, 305 U. S. 177 (1938), where this Court upheld equitable action to review an allegedly erroneous determination of the Interstate Commerce Commission as against the contention that adequate relief was available by defense against criminal prosecution under the Railway Labor Act. See also *Terrace* v. *Thompson*, 263 U. S. 197; *Truax* v. *Raich*, 239 U. S. 33; *Cf. Utah Fuel Co.* v. *National Bituminous Coal Commission*, 306 U. S. 56.

It seems clear that appellants established in the district court a valid claim for equitable relief and there can be little doubt that the decision of the district court on this issue presents a substantial federal question. This seems particularly true in view of the past allusion of the district court to the doctrine of unclean hands. Judge Dobie, in his opinion, while he did not state it specifically, seemed

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[1] See particularly *Bus Employees* v. *Wisconsin Board*, 340 U. S. 416, 417 fn.

to indicate the possibility that appellants might be precluded from equitable relief because of the adjudged defiance of the state court injunction. Far from detracting from the case for equitable relief, the possibility that punishment for contempt for the invalid decree might be sustained militates most strongly in favor of appellants' case. Surely it cannot be said that, where the possibility of punishment for contempt might become a certainty regardless of the validity of the injunction upon which the contempt proceedings were based, there is adequate relief through the medium of the state courts. If, as Judge Dobie indicates, appellants should be held punishable for contempt in the state court without regard to the validity of the injunction, then the case for equitable relief in the federal district court is impregnable.

III

Appellants' Case in the District Court Was Ripe for Adjudication

In the *Watson* case, cited above, this Court held that, even though a cause of action in equity had been established, the district court should retain the bill but stay its hand until the vague provisions of the amendment to the Florida constitution there challenged had been fully interpreted by the state courts of Florida. No case for such judicial abstention is here present. While the district court in its opinion intimates that there is some question as to whether the Virigina statute applies to ferries, the express language of the statute makes this clear beyond all doubt. By its terms the statute applies to all persons engaged in providing transportation. No exemption of any sort is made. Ferries are engaged in providing transportation. The fact that, under a separate statute, uncon-

cerned with matters of labor relations, the Governor has power to authorize the seizure of ferries, in no way detracts from the applicability of the general labor statute. In this respect, it is interesting to note that the Governor, the Attorney General, and the Ferry Corporation have throughout this litigation contended and conceded that the Virginia act does apply to ferries, and it was so held by the state court in the original injunction proceedings.

Since there is no possibility that appellants' case against this statute can be materially affected by any interpretation even remotely likely to come out of state court proceedings, the abstention theory of the *Watson* case is not here applicable. Even if it were applicable, however, the district court's decree of dismissal was erroneous and should be reversed. At the least, as in the *Watson* case, the district court should have retained the bill and stayed its hands.

There can be little doubt that the jurisdictional as well as the substantive matters dealt with by the lower court present substantial federal questions.

Conclusion

The action of the district court would permit a palpably invalid state statute to frustrate the exercise of federally protected rights by appellant labor organization, its officers and members. The action of the district court would require appellants either to comply with an invalid state law at the very time they require the protection of the federal courts in exercising their rights under the Labor-Management Relations Act, 1947, or violate the state law at the risk of being held in contempt and unable to raise the invalidity of the orders based on that law. The immediate and irreparable injury in this dilemma is clear.

Appellants respectfully submit that the questions pre-

sented here are substantial and they are of public importance.

Respectfully submitted,

SIDNEY H. KELSEY,
JOSEPH L. RAUH, JR.,
Attorneys for Appellant.

Date: September 24, 1951.

APPENDIX "A"

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA AT NORFOLK

Equity No. 1346

LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A. F. L.), an Unincorporated Association, Through H. L. EVERTON, Its President, the Other Officers and Members of Said Association, Individually and as Representatives of the Licensed and Unlicensed Personnel of VIRGINIA FERRY CORPORATION, *Complainants,*

versus

HONORABLE JOHN S. BATTLE, as Governor of the Commonwealth of Virginia, *Defendant*

FINAL DECREE

This cause came on to be heard on the 20th day of July, 1951 before this court consisting of the three undersigned judges in accordance with the statute in such cases made and provided, upon the complaint, the exhibits filed therewith, the motion of the defendant to dismiss, and the stipulations of the parties, and was argued by counsel.

Upon consideration whereof, the court, having taken the case under advisement, is now of the opinion, for the reasons set forth in its written opinion filed herewith, that the plaintiffs are not entitled to the relief prayed in their complaint, and, therefore, it is Ordered that this action be dismissed, that it be stricken from the docket, and that the defendant recover of the plaintiff the costs of this action.

(S.) ARMISTEAD M. DOBIE,
United States Circuit Judge;
(S.) STERLING HUTCHESON,
United States District Judge;
(S.) ALBERT V. BRYAN,
United States District Judge.

August 3, 1951.

APPENDIX "B"

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA

No. 1346

LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A. F. L.), an Unincorporated Association, Through H. L. EVERTON, Its President, the Other Officers and Members of Said Association, Individually and as Representatives of the Licensed and Unlicensed Personnel of VIRGINIA FERRY CORPORATION, *Complainants,*

versus

HONORABLE JOHN S. BATTLE, as Governor of the COMMONWEALTH OF VIRGINIA, *Defendant*

On Motion to Dismiss Application for Injunction

(Argued July 20, 1951. Decided August 3, 1951)

Before Dobie, Circuit Judge, and Hutcheson and Bryan, District Judges

Sidney H. Kelsey, Attorney for Plaintiffs; Hon. J. Lindsay Almond and Henry T. Wickham, for defendant.

DOBIE, *Circuit Judge:*

Local 333B (hereinafter referred to as the Union) is an unincorporated labor union, chartered by the International Longshoremen's Association and the American Federation of Labor. The Union is the certified collective bargaining agent of the employees of the Virginia Ferry Corporation (hereinafter referred to as Ferry), which is a private Virginia corporation operating ferries as a link in interstate commerce, over Chesapeake Bay (all in Virginia) between Little Creek and Kiptopeke Beach.

The Union instituted this civil action in the United States District Court for the Eastern District of Virginia against John S. Battle as Governor of Virginia.

We append complainants' prayer for relief:

> "WHEREFORE your petitioners respectfully pray that a three judge court pursuant to 28 USCA Secs. 2281, 2283 and 2284 be immediately convened to prevent further irreparable injury to their rights, and to consider and determine and declare the Virginia Public Utilities Labor Act, Title 30, Sec. 75 through 95 of the Code of Virginia (1950) unconstitutional and invalid as conflicting with the federal Constitution and Acts of Congress mentioned; that preference for hearing over other cases on the docket, in accordance with statute be given this cause; that the Hon. John S. Battle, Governor of the Commonwealth of Virginia, who is empowered in said State act to administer, carry out and enforce the same, be summoned to answer this petition, and that he be enjoined and restrained from the enforcement, operation or execution of said State statute on the grounds of its unconstitutionality; that an interlocutory injunction be granted with all possible speed, to be later made permanent, to attain the ends and purposes mentioned; that pursuant to Title 28 USCA, Sec. 2283, in order to protect and effectuate the judgment of the three judge court, an injunction may be granted enjoining the Court of Law and Chancery of the City of Norfolk, Virginia, from taking any further action with respect to this matter; your complainants further respectfully pray that they be granted such other further and different relief as the nature of their case requires or to justice shall be deemed meet."

Differences had arisen between Ferry and the Union as to wages and working conditions. The Union reported this to Governor Battle, who, under the Virginia Public Utilities Labor Act (hereinafter referred to as the Act), requested a conference between Ferry and the Union. After two conferences had resulted in a complete failure to reach an agreement, Governor Battle requested that Union and Ferry submit their differences to arbitration.

This request was refused by both parties. The Act does not require arbitration.

In the Court of Law and Chancery of the City of Norfolk, Virginia, Ferry on May 17, 1951, obtained an injunction against the Union requiring compliance with the Act. Later, that Court found the Union and two of its officers, Everton and Owens, guilty of criminal contempt in violating this injunction. The Union was fined $7,500. Everton was fined $1,000 and sentenced to ten days confinement in jail; Owens was fined $750 and sentenced to five days in jail. These fines and jail sentences were stayed by the Court, so that the contempt cases might be taken to the Supreme Court of Appeals of Virginia.

The case was orally argued before the three-judge federal District Court on the defendant's motion to dismiss. We think this motion must be granted.

It is elementary that, when a State statute is attacked on the ground that it contravenes the federal Constitution or a federal statute, there is a strong presumption in favor of the validity of the State statute. Equally clear is it that federal courts are loath to pass on a federal constitutional question when there is in the case another non-constitutional question which may well dispose of the case in the State court. Spector Motor Co. v. McLaughlin, 323 U. S. 101, 104. Proper comity between State and federal courts also requires that a federal court should interfere with proceedings in a State court, even when the federal court has that power, only upon a clear and convincing showing of the clear-cut necessity for the exercise of that power. Such a showing, we think, is absent from the case before us.

The clearest ground justifying our view that complainants' civil action must be dismissed is that plaintiffs have an altogether adequate remedy in the State courts. The Union in both the injunction suit and the contempt proceedings has recourse to the Supreme Court of Appeals of Virginia. If that Court should uphold the State authority as valid, against complainants' claim of invalidity on federal grounds, an appeal lies to the Supreme Court of the United States.

Head-note 4, in Great Lakes Dredge & Dock Co. v. Huffman, 319 U. S. 293, 294, reads:

> "In a suit in the federal district court against a state officer charged with the administration and enforcement of the Louisiana Unemployment Compensation Law, brought by plaintiffs engaged in navigation and operation of vessels used in improving navigable waters of the State, and praying a declaratory judgment that the state law as applied to them and their employees is unconstitutional, it was the duty of the court to withhold such relief, it appearing that under the state law a taxpayer who pays a challenged tax to the appropriate state officer may maintain a suit for reimbursement."

In this same case, 319 U. S. at pages 297, 298, Chief Justice Stone said:

> "This withholding of extraordinary relief by courts having authority to give it is not a denial of the jurisdiction which Congress has conferred on the federal courts, or of the settled rule that the measure of inadequacy of the plaintiff's legal remedy is the legal remedy afforded by the federal not the state courts. Stratton v. St. Louis S. W. Ry. Co., 284 U. S. 530, 533-34; Di Giovanni v. Camden Ins. Assn., 296 U. S. 64, 69. On the contrary, it is but a recognition that the jurisdiction conferred on the federal courts embraces suits in equity as well as at law, and that a federal court of equity, which may in an appropriate case refuse to give its special protection to private rights when the exercise of its jurisdiction would be prejudicial to the public interest (United States v. Dern, 289 U. S. 352, 359-360; Virginian Ry. v. Federation, 300 U. S. 515, 519-53), should stay its hand in the public interest when it reasonably appears that private interests will not suffer. See Pennsylvania v. Williams, 294 U. S. 176, 185, and cases cited.
>
> It is in the public interest that federal courts of equity should exercise their discretionary power to grant or

withhold relief so as to avoid needless obstruction of the domestic policy of the states."

Chief Justice Vinson, in Alabama Public Service Commission v. Southern Railway Co., 341 U. S. 341, 349, stated:

> "As adequate state court review of an administrative order based upon predominantly local factors is available to appellee, intervention of a federal court is not necessary for the protection of federal rights. Equitable relief may be granted only when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts.' Considering that 'few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies,' the usual rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case. Whatever rights appellee may have are to be pursued through the state courts."

See, also, Burford v. Sun Oil Co., 319 U. S. 315; Railroad Commission of Texas v. Towan and Nicholas Oil Co., 310 U. S. 573, 311 U. S. 614, 615; Matthews v. Rogers, 284 U. S. 521, 525.

There is a serious question whether the Act applies to ferries in Virginia. Title 33, Chapter 3, Articles 1-6, specifically cover the subject in great detail. Whether these provisions are solely controlling on ferries so as to exempt ferries from the Act is a question of interpretation of Virginia statutes. The interpretation of those statutes by the Supreme Court of Appeals of Virginia is final and binding, for the purposes of this case, on the federal courts. Thus far, this question has not been passed upon by that Court. Our Court would indeed be in an anomalous position were we to grant the relief sought here, only to find later that the

Act is declared by the highest Court in Virginia to be utterly inapplicable to ferries.

Said Mr. Justice Douglas in American Federation of Labor v. Watson, 327 U. S. 582, 595-596:

> "As we have said, the District Court passed on the merits of the controversy. In doing so at this stage of the litigation, we think it did not follow the proper course. The merits involve substantial constitutional issues concerning the meaning of a new provision of the Florida constitution which, so far as we are advised, has never been construed by the Florida courts. Those courts have the final say as to its meaning. When authoritatively construed, it may or may not have the meaning or force which appellees now assume that it has. In absence of an authoritative interpretation, it is impossible to know with certainty what constitutional issues will finally emerge. What would not be written on the constitutional questions might therefore turn out to be an academic and needless dissertation."

And, in Shipman v. DuPre, 339 U. S. 321, 322, the brief per curiam opinion states:

> "From the papers submitted on appeal, it does not appear that the statutory sections in question have as yet been construed by the State courts. We are therefore of the opinion that the District Court erred in disposing of the complaint on the merits."

We advert briefly to certain other features of the case before us. The ferries are now being operated by the State Highway Commissioner, upon the written approval of Governor Battle, under the special Virginia statutes (mentioned above) dealing with ferries, and not under the Public Utilities Act, the enforcement of which we are asked to enjoin. The Highway Commissioner has filed an affidavit in which he states:

> "5. That on July 10, 1951 almost all of the licensed and unlicensed personnel of the Virginia Ferry Corpora-

tion requested employment with the Commonwealth of Virginia and at this time are employed in the operation of the ferry between Little Creek and Kiptopeke, Virginia; and

6. That neither he nor his agents have at any time interfered with the right of Local 333B, United Marine Division of International Longshoremen's Association (A. F. L.), or the licensed and unlicensed personnel of the Virginia Ferry Corporation, to strike or bargain collectively with representatives of the Virginia Ferry Corporation."

Governor Battle has filed an affidavit setting forth:

"7. That, except as set forth above, he has not administered or carried out the provisions of the so-called Virginia Public Utilities Act (Article 4, Chapter 4 of Title 40 of the Code of Virginia) in the present controversy between Local 333B, United Marine Division of I. L. A. (AFL) and the Virginia Ferry Corporation;

8. That he is not administering, carrying out or enforcing the so-called Virginia Public Utilities Act as averred by the complainants in the above mentioned case and does not intend to administer, carry out or enforce it against the said complainants in their present controversy with the said Virginia Ferry Corporation."

The State was neither a party to, nor represented in, the injunction proceedings in the State Court. The State was represented in the contempt proceedings instituted to vindicate the dignity and authority of the State court. Neither Ferry nor the State Highway Commissioner is a party to the instant case before us.

Under the "clean hands" doctrine, the position of the Union is not strong. The Union seeks an injunction from us when it and its officers have been adjudged guilty of criminal contempt in violating the State court's injunction. The Union has thus violated a solemn court decree on the chance that the decree, though then in full force, might

later be held to be erroneous and invalid. Said Chief Justice Taft, in Howat v. Kansas, 258 U. S. 181, 189-190:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished. Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 450; Toy Toy v. Hopkins, 212 U. S. 542, 548. See also United States v. Shipp, 203 U. S. 563, 573."

The practice should not be encouraged of litigants violating an apparently valid injunction of a State court and then rushing into a three-judge court for another injunction which would relieve the litigant of all the consequences of the litigant's seemingly contemptuous acts.

We do not think, as defendant here contends, that the case before us is entirely moot. There is, however, grave doubt that, if we refuse the injunction sought, irreparable injury will result to the Union.

The suggestion is made that we retain this case upon our docket until the Virginia Supreme Court of Appeals has interpreted the Virginia statutes here involved. That practice has been followed in a number of cases but we do not feel it is proper here. As we have pointed out, the Union has a complete and adequate remedy in the form of a review by the Virginia Supreme Court of Appeals of both the injunction proceeding and the contempt proceeding in the lower State court, and, should the high Court of Virginia sustain the State authority, an appeal is available to the United States Supreme Court.

For the reasons stated, the civil action of the complainants is dismissed.

Dismissed.

I concur.

(S.) STERLING HUTCHESON,
U. S. District Judge.

I concur.

(S.) ALBERT V. BRYAN,
U. S. District Judge.

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 403

LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A. F. L.), AN UNINCORPORATED ASSOCIATION, THROUGH H. L. EVERTON, ITS PRESIDENT, THE OTHER OFFICERS AND MEMBERS OF SAID ASSOCIATION, INDIVIDUALLY AND AS REPRESENTATIVES OF THE LICENSED AND UNLICENSED PERSONNEL OF VIRGINIA FERRY CORPORATION,

Appellants,

vs.

HON. JOHN S. BATTLE, AS GOVERNOR OF THE COMMONWEALTH OF VIRGINIA,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

STATEMENT OF APPELLEE OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

J. LINDSAY ALMOND, JR.,
Attorney General of Virginia,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 403

LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A. F. L.), AN UNINCORPORATED ASSOCIATION, THROUGH H. L. EVERTON, ITS PRESIDENT, THE OTHER OFFICERS AND MEMBERS OF SAID ASSOCIATION, INDIVIDUALLY AND AS REPRESENTATIVES OF THE LICENSED AND UNLICENSED PERSONNEL OF VIRGINIA FERRY CORPORATION,

Appellants,

vs.

HON. JOHN S. BATTLE, AS GOVERNOR OF THE COMMONWEALTH OF VIRGINIA,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

STATEMENT OF APPELLEE OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

The appellee, believing that the matters set forth herein will demonstrate the lack of substance in the questions pre-

sented by this appeal, files this statement in opposition to the appellants' statement as to jurisdiction. The appellee includes herein its motion to dismiss the appeal or, in the alternative, to affirm the decree of the United States District Court for the Eastern District of Virginia, Richmond Division, on the ground that the questions raised on behalf of the appellants are so unsubstantial as not to need further argument. The matters here relied upon are more particularly stated below.

I

State Statutes Involved and the Nature of the Case

A

The Statutes

This appeal raises only the question of whether or not the three-judge district court erred in sustaining the appellee's motion to dismiss. There are two Virginia statutes involved. The first is commonly referred to as the Virginia Public Utilities Labor Relations Act and is found as Article 4, Chapter 4 of Title 40 of the Code of Virginia (Sections 40-75 to 40-95, inclusive). This Act, among other things, provides that whenever employees or management desire a change in the rate of compensation of the employees, the party so desiring such change shall give written notice to the other stating in detail the changes requested and send a copy of such notice to the Governor. A conference between parties must then be held to negotiate their differences and if this fails a second conference must be held with proper notice to the Governor. If either party then feels that further negotiations would be fruitless, the Governor must be notified to that effect, at which time he shall request the parties to submit their differences to arbitration upon terms and conditions agreeable to both par-

ties. If either party is unwilling to arbitrate notice is given to the Governor of the proposed time to call a work stoppage. Before the time for the proposed strike the Governor is required to investigate the situation and if he feels that the work stoppage would constitute a serious menace or threat to the public health, safety or welfare he shall issue a proclamation so declaring and take possession of the utility on the day set for the strike.

The second statute is known as the Ferry Seizure Act and is codified as Article 5, Chapter 3 of Title 33 of the Code of Virginia (Sections 33-202 to 33-208, inclusive). It vests the State Highway Commissioner with the power of eminent domain to acquire for temporary use in connection with the State Highway System any ferry which serves as a connecting link between highways which are a part of the State Highway System, when the owner thereof is unable to operate, and, in the opinion of the Commissioner, the normal operation of the ferry is so impaired or suspended as to result in a serious obstruction to the use and operation of the State Highway System. The definition of the word, "ferry" makes it clear that the act is applicable to the Virginia Ferry Corporation, the employer of the members of Local 333B.

B

The Facts

1. On May 17, 1951, counsel for the Virginia Ferry Corporation and counsel for Local 333B appeared before the Court of Law and Chancery for the City of Norfolk, Virginia, and that court, finding that the provisions of the Virginia Public Utilities Labor Relations Act was applicable to the parties before it, no constitutional question being raised, issued an order requiring Local 333B to comply with the provisions thereof.

2. On June 5, 1951, Local 333B removed the above mentioned suit, entitled *Virginia Ferry Corporation* v. *Local 333B, etc., et als.* to the United States District Court for the Eastern District of Virginia, Norfolk Division.

3. On June 20, 1951, the Governor of Virginia was served with a copy of the petition for injunction filed in the court below. This petition, among other things, prayed that a three-judge court be convened and that the Court of Law and Chancery for the City of Norfolk, Virginia, be enjoined from taking further action with reference to the dispute. No mention was made of the fact that the injunction suit, entitled, *Virginia Ferry Corporation* v. *Local 333B, etc., et als.*, which involved the same controversy, had been removed from the state court to the Norfolk Division of the United States District Court for the Eastern District of Virginia.

4. On June 22, 1951, Local 333B, without waiting for a hearing on its petition for injunction filed with the court below, or without requesting the Norfolk Division of the District Court for the Eastern District of Virginia to dissolve the injunction originally issued by the state court, took the law into its own hands and disobeyed the injunction by causing a work stoppage.

5. On June 23, 1951, on motion of the Virginia Ferry Corporation, the Norfolk Division of the District Court remanded, for lack of jurisdiction, the case of *Virginia Ferry Corporation* v. *Local 333B, etc., et als.* to the Court of Law and Chancery for the City of Norfolk for appropriate action, including action on any contempt for the disobedience of the injunction order originally issued by the state court on May 17, 1951.

6. On June 26, 1951, the State Highway Commissioner, in accordance with the Ferry Seizure Act, took possession of the properties of the Virginia Ferry Corporation, stating

that in his opinion the normal operation of the ferry between Little Creek and Kiptopeke, Virginia, had been so interrupted, curtailed and suspended as to result in a serious obstruction to the use and operation of the State Highway System.

7. On June 28, 1951, the Court of Law and Chancery for the City of Norfolk, Virginia, found Local 333B, its president and secretary guilty of wilful criminal contempt for violating the injunction order issued on May 17, 1951. However, execution of the judgments against them was postponed in order to allow time for an appeal to the Supreme Court of Appeals of Virginia.

C

The Proceedings Below

This case came on to be heard upon the appellants' petition, amended petition, and the appellee's motion to dismiss. The appellee moved the court below to dismiss the action on the following grounds, among others:

(1) The case presented by the petition was moot;

(2) The appellants had not suffered any irreparable injury as to warrant the exercise of an equity court's discretionary power on their behalf;

(3) The appellants did not come into the equity court below with "clean hands"; and

(4) The Virginia Public Utilities Labor Relations Act had not been construed by the Supreme Court of Appeals of Virginia.

Two affidavits were introduced in support of the appellee's motion to dismiss. The affidavit of James A. Anderson, State Highway Commissioner, was to the effect that, on June 25, 1951, he had taken possession of the properties of the Virginia Ferry Corporation pursuant to the Ferry

Seizure Act, and that neither he nor his agents had at any time interfered with the rights of Local 333B, or the licensed and unlicensed personnel of the Virginia Ferry Corporation, to strike or bargain collectively with representatives of the said ferry corporation.

The affidavit of the appellee, the Honorable John S. Battle, Governor of Virginia, showed that he was notified of the labor controversy between the appellants and the Virginia Ferry Corporation pursuant to the Virginia Public Utilities Labor Relations Act but that the only affirmative action he took pursuant thereto was to request the parties to arbitrate. While it was true that Virginia's Commissioner of Labor was present at some of the conferences held by the parties, the act does not require it and his presence had no legal effect. He was present simply to assist either party if so requested. (See, Section 40-78 of the Code of Virginia). The appellee's affidavit also showed that since June 19, 1951, the date of the Governor's request for arbitration of the dispute between the appellants and the Virginia Ferry Corporation, the Governor had in no way or manner administered or carried out the provisions of the utilities act in the controversy between the appellants and the said ferry corporation and that he did not intend to do so.

Under the appellants' argument III, entitled, "Appellants' Case in the District Court Was Ripe For Adjudication" it is stated: "* * * it is interesting to note that the Governor, the Attorney General, and the Ferry Corporation have throughout this litigation contended and conceded that the Virginia [Public Utilities Labor Relations] act does apply to ferries, * * *." The Virginia Ferry Corporation, of course, was not a party to the litigation below, and what its counsel has or has not contended and conceded is not material here. The appellee is not aware

of the appellants' authority for stating that the Attorney General and Governor "contended and conceded" that the utilities act did apply to ferries. The record is to the contrary. In the appellee's motion to dismiss the following is found:

> "(4) * * *
>
> "The so-called Virginia Public Utilities Labor Act has not been construed by the Supreme Court of Appeals of Virginia and, since the constitutional issues might be seriously modified or altogether eliminated in so far as the complainants are concerned, this Court will refrain from passing upon the merits of the petition at this time."

In oral argument before the court below, the Attorney General, representing the Governor, stated that in his opinion there was a serious question as to whether or not the utilities act applied to ferries, and the district court, in its opinion, said:

> "There is a serious question whether the Act applies to ferries in Virginia. Title 33, Chapter 3, Articles 1-6, specifically cover the subject in great detail. Whether these provisions are solely controlling on ferries so as to exempt ferries from the Act is a question of interpretation of Virginia statutes. The interpretation of those statutes by the Supreme Court of Appeals of Virginia is final and binding, for the purposes of this case, on the federal courts. Thus far, this question has not been passed upon by that Court. Our Court would indeed be in an anomalous position were we to grant the relief sought here, only to find later that the Act is declared by the highest Court in Virginia to be utterly inapplicable to ferries."

The court below sustained the appellee's motion to dismiss on the following grounds:

(1) The appellants had an adequate state remedy;

(2) The Supreme Court of Appeals of Virginia had not

determined whether or not the utilities act applied to ferries;

(3) The appellants did not come into a court of equity with "clean hands"; and

(4) The refusal of the injunction would not result in irreparable injury to the appellants.

D

The Question Presented

The constitutionality of the Virginia Public Utilities Labor Relations Act was not argued before the court below and, of course, the court could not be in error for failing to hold the act unconstitutional. The only question presented by this appeal is whether or not the district court properly sustained the appellee's motion to dismiss the action for the reasons set forth above.

II

ARGUMENT

A

The Question of the Validity of the Virginia Public Utilities Labor Relations Act Is Not in Issue

Regardless of whether or not the constitutionality of the Virginia Public Utilities Labor Relations Act could present a substantial federal question, the fact remains that such a question, substantial or otherwise, is not before this Court. The court below did not consider the validity of the utilities act, and properly so. Argument was limited to the consideration of the appellee's motion to dismiss and the questions raised thereby are not controlled by, or in any way connected with, the consideration of the contentions raised

in the petition filed below. The merits were not reached, and the only question before the court below was whether or not it should take jurisdiction of the case. This it refused to do. The reasons for sustaining the appellee's motion are fully set forth in the opinion of the court below and former opinions of this court foreclose argument to the effect that the appellants' petition should not have been dismissed.

B

The Appellee's Motion to Dismiss Was Properly Sustained by the Court Below

To adjudicate the issue sought to be presented by the appellants, the court below would first have had to pass upon the applicability of the utilities act which has not been construed by the Supreme Court of Appeals of Virginia. However, it is clear that a federal court should not express an opinion on the constitutionality of a state statute until the state court has defined its field of application. *Shipman* v. *Dupre,* 339 U. S. 321, 322; *American Federation of Labor* v. *Watson,* 327 U. S. 582, 595; *Spector Motor Service* v. *McLaughlin,* 323 U. S. 101, 105; and *Railroad Commission* v. *Pullman Co.,* 312 U. S. 496.

The appellants apparently recognize the principle laid down by this Court in the above cited cases but contend that such principle does not apply when a state statute is unambiguous and needs no construction as to its applicability. This same contention was made before this Court in *Shipman* v. *Dupre, supra,* and it was dismissed in a per curiam opinion. Furthermore, the Attorney General urged on the court below that there was a serious question whether the utilities act applied to ferries. The court below, as already pointed out above, also found that "there is a serious question whether the Act applies to ferries in Virginia".

The appellants next contend that "at the least, as in the *Watson* case, the district court should have retained the bill and stayed its hands". The *Watson* case, *supra,* may be distinguished. There, there was no litigation pending in the state courts. Here, as the court below pointed out, the appellants in both the injunction suit and the contempt proceedings have recourse to the Supreme Court of Appeals of Virginia, and to this Court if the state's authority is upheld as valid against the appellants' claim of invalidity on federal grounds. Thus, in the instant case the appellants had an immediate and altogether adequate remedy in the state court by simply appealing litigation which had already become final in the lower state court.

There are other circumstances present in this case to justify the refusal of the court below to retain the case upon its docket. The appellants did not come into the district court with "clean hands". Moreover, the affidavits filed by the appellee clearly showed that the right of the appellants to strike and to bargain collectively have not been interfered with in any way. Thus, the appellants have certainly suffered no irreparable injury. Under such circumstances, and upon a consideration of comity that exists between federal and state courts, it cannot be said that the court below erred by entering its decree sustaining the appellee's motion to dismiss. Equitable relief is never a matter of right but is a matter of judicial discretion to be exercised only when the need is clear. *Eccles* v. *Peoples Bank,* 333 U. S. 426, 431.

Conclusion

WHEREFORE, the appellee respectfully submits this statement showing that the questions upon which the decision in this case depends are so unsubstantial as not to need further argument, and the appellee respectfully moves the

Court to dismiss this appeal or, in the alternative, to affirm the decree entered in this case by the United States District Court for the Eastern District of Virginia, Richmond Division.

J. LINDSAY ALMOND, JR.,
Attorney General of Virginia.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 403

LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A. F. L.), (AN UNINCORPORATED ASSOCIATION, THROUGH H. L. EVERTON, ITS PRESIDENT, THE OTHER OFFICERS AND MEMBERS OF SAID ASSOCIATION, INDIVIDUALLY AND AS REPRESENTATIVES OF THE LICENSED AND UNLICENSED PERSONNEL OF VIRGINIA FERRY CORPORATION,

Appellants,

vs.

HONORABLE JOHN S. BATTLE, AS GOVERNOR OF THE COMMONWEALTH OF VIRGINIA,

Appellee

BRIEF OF APPELLANTS IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

SIDNEY H. KRAMER,
JOSEPH L. RAUH, JR.,
Attorneys for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No.

LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A. F. L.), (AN UNINCORPORATED ASSOCIATION, THROUGH H. L. EVERTON, ITS PRESIDENT, THE OTHER OFFICERS AND MEMBERS OF SAID ASSOCIATION, INDIVIDUALLY AND AS REPRESENTATIVES OF THE LICENSED AND UNLICENSED PERSONNEL OF VIRGINIA FERRY CORPORATION,

Appellants,

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HONORABLE JOHN S. BATTLE, AS GOVERNOR OF THE COMMONWEALTH OF VIRGINIA,

Appellee

BRIEF OF APPELLANTS IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

Counsel for appellee in his statement opposing jurisdiction and motion to dismiss or affirm accomplishes little except to demonstrate the substantial nature of the questions presented to this Court:

(1) The unconstitutionality of the Virginia Public Utilities Labor Act is so plain that appellee does not undertake

to deal with this issue. As we have already pointed out in our Statement as to Jurisdiction, no other conclusion is possible under the decisions of this Court.

(2) Counsel for appellee confines his argument to the procedural questions decided by the district court. It is the contention of appellants that these questions are in themselves substantial and deserving of adjudication by this Court. On this question—the substantiality of the procedural issues themselves—appellee's brief is virtually silent, confining itself to a cursory discussion of the procedural issues on their merits rather than as to their substantiality.

I

Appellants' Petition in the District Court Stated a Cause of Action in Equity

For this proposition, appellants stand squarely on *American Federation of Labor* v. *Watson*, 327 U. S. 582. Appellee's sole attempt to distinguish the *Watson* case is that here the harassment and injury only threatened in the *Watson* case were rendered present and actual by the summary injunction and the prosecution in the state courts to which appellant union and its officers have been subjected.

Certainly the injury which appellant union, its officers and members, have sustained in this case is irreparable injury. They have been enjoined from exercising the right to engage in a peaceful strike—a right guaranteed by the Labor-Management Relations Act, 1947, against invasion by state law. For exercising these rights, in defiance of an invalid state injunction, appellant union and its officers have been prosecuted by the appellee's chief law officer, the Attorney General of Virginia, for contempt, have been found guilty and fined. Appeals from these sentences are pending; appellants are nevertheless subjected to the risk that

the injunction, even though invalid, may be held binding. Cf. *United States* v. *United Mine Workers of America*, 330 U. S. 258. There is, therefore, no adequate remedy open to appellants by way of appeal from the contempt convictions. Instead, the procedures devised in this case smack of a desire to use invalid state legislation in order to achieve a *fait accompli* so effectively as to make judicial review all but unavailable. If this Court refuses to entertain this appeal, appellants' rights have already slid down the slippery drain deliberately constructed for the purpose forbidden by federal law.

Meanwhile, appellants have not only been threatened with invasion of their federally guaranteed rights but, unless the federal courts intervene to protect those rights, an actual invasion will have been successfully carried out. On this issue—that is, whether appellants in their original petition stated a cause of action in equity—appellee has offered neither argument nor authority. Indeed, neither is available. No case cited by appellee sustains the dismissal of a bill under circumstances remotely resembling those here presented. In the two cases most heavily relied upon, the *Watson* case, *supra*, and *Shipman* v. *DuPre*, 339 U. S. 321, jurisdiction was upheld rather than denied.

II

Appellants' Case in the District Court Was Ripe for Adjudication

The applicability of the Virginia Public Utilities Labor Act to ferries is a phantom issue, raised for the first time in the federal district court. The Ferry Company, in seeking the original state court injunction, contended that the Act applied to ferries. The state court agreed, so holding in its decree. Evidently the Attorney General of Virginia

agreed at that time, since he personally conducted the contempt prosecutions pursuant to which appellant union and its officers were ordered to pay fines and to be imprisoned. Evidently appellee, the Governor of Virginia, agreed since he, as stated in appellants' petition below, undertook to enforce the Act in this particular dispute. The expression of subsequent doubt by the Attorney General of Virginia in arguing before the district court below cannot erase the unanimity of earlier opinions. If such a shift casts doubt on anything, it casts doubt on the good faith of the Attorney General. It is difficult to reconcile the action of the Attorney General of Virginia in the contempt proceedings in which he successfully sought to impose criminal penalties on appellant union and its officers with his action only a few days later in the federal district court and with his action here suggesting that the very statute he had enforced against appellants was arguably inapplicable to them.

A simple reading of the two statutes is enough to set this point at rest. The Ferry Act does not deal with, does not mention, and is not limited to labor disputes. It was enacted three years before the Virginia Public Utilities Labor Act. The latter Act contains a definition of "public utility" which clearly includes ferries and it contains no language which either explicitly or by permissible inference can be said to exempt or exclude ferries. One Act deals with ferries, the other with labor disputes. There is no inconsistency between the acts and no basis for any issue of statutory construction except a belated desire to prevent the federal courts from vindicating appellants' federally guaranteed rights.

Conclusion

Appellants do not presume to argue these issues at length, but merely to point out that, passing over the obvious unconstitutionality of the Virginia statute, the decision of the dis-

trict court, confined as it was to procedural and jurisdictional matters, presents substantial federal questions. The applicability of the *Watson* case to the case at bar is a substantial question. Likewise, the ripeness of the present controversy for adjudication presents a substantial question. Appellants respectfully urge that this Court note probable jurisdiction.

Respectfully submitted,

SIDNEY H. KELSEY,
JOSEPH L. RAUH, JR.,
Attorneys for Appellants.

Date: October, 1951.